

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL R. FARRIS,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

Case No. C03-5044FDB

ORDER RE EAJA FEES PURSUANT
TO 28 U.S.C. § 2412 and REMAND
TO THE COMMISSIONER

This Court adopted the Report and Recommendation of Magistrate Judge Strombom, and Plaintiff appealed this decision upholding the Commissioner's denial of benefits. On appeal, the Ninth Circuit agreed with Farris' contention that the Administrative Law Judge (ALJ) improperly rejected the opinion of Ann Bruce, M.D., his treating psychologist for the reason that Ninth Circuit precedent foreclosed the ALJ's reason for rejection of Bruce's diagnosis, which was because, among other things, it was based on the combined impact of back pain and mental impairment, beyond the range of Bruce's medical specialty, and submitted as an advocate. The Ninth Circuit also concluded that it was unclear whether Farris could perform his past relevant work as a data entry clerk, security guard or as a delivery driver, given the ALJ's findings that Farris could have "no contact with the general public" or that he required "the opportunity to sit and stand at will." The Court also held that necessary findings of fact as to the physical and mental demands of these past jobs should have been made as well, and should be corrected on remand. Thus, the Ninth Circuit remanded this matter for "further proceedings, to allow the ALJ to clarify her findings, and support those findings with substantial evidence in the record, applying the correct legal standards. This matter was reversed and

1 remanded to this court with instructions to remand to the Commissioner for further proceedings
2 properly to evaluate Dr. Bruce's opinion and to reconsider the past relevant work issue.

3 Plaintiff seeks EAJA fees as the prevailing party in this matter. The Defendant objects,
4 arguing that the Commissioner was substantially justified in her conclusions.

5 The Ninth Circuit concluded as "not legitimate" the ALJ's rejection of the opinion of Ann
6 Bruce, M.D. and remanded for proper evaluation of the doctor's opinion. As to the past relevant
7 work issue, however, remand to the ALJ is necessary to clarify her findings and support those
8 findings with substantial evidence, applying the correct legal standards.

9 The Commissioner was not substantially justified as to the rejection of Ann Bruce, M.D.'s
10 opinion in view of the Ninth Circuit's precedent on the matter. The Commissioner was, however,
11 substantially justified on the past relevant work issue, as clarification rather than outright rejection
12 was ordered. Therefore, the requested fees of \$7,131.85, expenses of \$114.81, and costs of \$150.00
13 will be reduced by half.

14 ACCORDINGLY, IT IS ORDERED:

- 15 1. Plaintiff's attorneys Amy M. Gilbrough and Elie Halpern are hereby awarded EAJA
16 fees of \$3,565.93, expenses of \$57.41, and costs of \$75.00.
- 17 2. In accordance with the directions from the Ninth Circuit, this cause of action is
18 REMANDED to the Commissioner of Social Security for further proceedings
19 properly to evaluate Dr. Bruce's opinion and to reconsider the past relevant work
20 issue.

21 DATED this 14th day of October, 2005.

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23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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